

On May 31, 2005 appellant, then a 46-year-old letter carrier, sustained injury to her right leg after carrying heavy weight over uneven terrain on wet ground for extended hours. By letter dated July 20, 2005, her claim was accepted for right tibialis tendinitis. It also accepted contracture of right tendon, right ankle sprain/strain, and joint derangement of the right ankle and foot. By letter dated May 3, 2006, the Office authorized surgery for right fusion of foot bones, right revision of calf tendon and right incision of heel bone. On May 16, 2006 appellant

underwent a gastrocnemius rescession of the right leg and navicular cuneiform arthrodesis of the right foot.

By letter dated June 4, 2007, the Office referred appellant to Dr. R. David Bauer, a Board-certified orthopedic surgeon, for a second opinion. In a report dated June 5, 2007, Dr. Bauer diagnosed right ankle sprain/strain related to the occupational injury “on a more likely than not basis.” He also noted magnetic resonance imaging (MRI) scan evidence of right ankle synovitis, unrelated to the occupational injury “on a more likely than not basis.” Dr. Bauer noted that appellant was status post podiatric surgery. He opined that there were no objective findings on physical examination to support appellant’s subjective complaints. Dr. Bauer further noted that there was no objective evidence that appellant could not perform the duties of her position without restrictions. He did not believe any further medical treatment was necessary.

In a September 26, 2007 report, Dr. Jeffrey C. Christensen, an attending physiatrist, disagreed with Dr. Bauer. He maintained that appellant needed further right foot surgery, noting that the strength of the posterior tibial tendon is inadequate to withstand the rigors of her job. Dr. Christensen advised that the transverse instability of her foot was profound and would continue to breakdown without surgery. He also contended that Dr. Bauer’s physical examination was inadequate in evaluating appellant’s ongoing condition.

The Office found a conflict in medical opinion between Dr. Christensen and Dr. Bauer. By letter dated October 22, 2007, it referred appellant to Dr. Paul Williams, a Board-certified orthopedic surgeon, for an impartial medical examination. In a November 20, 2007 report, Dr. Williams opined:

“It is my belief that [appellant], on a more probable than not basis, had bilateral flexible flat feet as a child and up into her adult age. Most likely, she probably had some posterior tib[ialis] tend[i]nitis from walking activities that she related to on-the-job activities but probably no more related to the job than other activities she does on a daily basis.”

Dr. Williams stated that it was his “belief” that appellant’s current condition was secondary to her surgical intervention and the flexible flat foot with marked pronation and heel valgus that predated her industrial injury. He opined that the accepted conditions had “reached a fixed and stable state at this time albeit that [appellant] does in fact have some posterior tib[ialis] deficiency.” Dr. Williams noted that this was “most likely not related to her industrial injury.” With regard to her work injury, appellant could return to the work she performed prior to the injury. However, due to her preexisting condition, it would not be good for her to walk long distances or carry heavy loads. Dr. Williams concluded that the surgery recommended by Dr. Christensen might be helpful in treatment of appellant’s foot, but was not secondary to the industrial injury.

On January 16, 2008 the Office proposed terminating appellant’s compensation benefits based on the opinion of the impartial medical examiner, Dr. Williams.

By letter dated January 24, 2008, appellant, through her attorney, disagreed with the proposed termination, stating that the May 16, 2006 surgery was not successful and that she still had residuals of her accepted condition.

By decision dated February 21, 2008, the Office terminated appellant's wage-loss and medical benefits effective the date of the decision.

### **LEGAL PRECEDENT**

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.<sup>1</sup> The Office may not terminate compensation without establishing that disability ceased or that it was no longer related to the employment.<sup>2</sup> The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>3</sup>

The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.<sup>4</sup> To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition, which requires further medical treatment.<sup>5</sup>

Section 8123(a) of the Federal Employees' Compensation Act provides in pertinent part that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.<sup>6</sup> Where a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.<sup>7</sup>

When the Office obtains an opinion from an impartial medical specialist for the purpose of resolving a conflict in the medical evidence and the specialist's opinion requires clarification

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<sup>1</sup> *I.J.*, 59 ECAB \_\_\_\_ (Docket No. 07-2362, issued March 11, 2008); *Fermin G. Olascoaga*, 13 ECAB 102, 104 (1961).

<sup>2</sup> *J.M.*, 58 ECAB \_\_\_\_ (Docket No. 06-661, issued April 25, 2007); *Anna M. Blaine*, 26 ECAB 351 (1975).

<sup>3</sup> *T.P.*, 58 ECAB \_\_\_\_ (Docket No. 07-60, issued May 10, 2007); *Larry Warner*, 43 ECAB 1027 (1992).

<sup>4</sup> *I.J.*, *supra* note 1; *Furman G. Peake*, 41 ECAB 361, 364 (1990).

<sup>5</sup> *Id.*

<sup>6</sup> 5 U.S.C. § 8123(a); *see also* *Raymond A. Fondots*, 53 ECAB 637 (2002); *Rita Lusignan (Henry Lusignan)*, 45 ECAB 207 (1993).

<sup>7</sup> *Sharyn D. Bannick*, 54 ECAB 537 (2003); *Gary R. Seiber*, 46 ECAB 214 (1994).

or elaboration, the Office must secure a supplemental report from the specialist to correct the defect in his original report.<sup>8</sup>

### **ANALYSIS**

The Board finds that the Office did not meet its burden of proof to terminate appellant's compensation benefits. A conflict in medical opinion arose between appellant's treating physician, Dr. Christensen, and the second opinion physician, Dr. Bauer. The Office properly referred appellant to Dr. Williams for an impartial medical examination. The issue to be resolved was whether appellant had residuals of her accepted injury and her capacity for work. Dr. Williams stated that appellant's current posterior tibialis deficiency was "most likely not related to her industrial injury. He noted that "on a more probable than not basis" appellant had flexible flat feet as a child and into her adult age and that "[m]ost likely she probably had some posterior tib[ialis] tendinitis from walking activities she related to on-the-job activities but probably no more related to the job than other activities she does on a daily basis." The Board finds that the opinion of Dr. Williams is speculative as he does not provide an unqualified opinion addressing the residuals of her accepted injury. Furthermore, Dr. Williams suggested that appellant's current condition was secondary to her surgical intervention and the flexible flat foot with marked pronation and heel valgus that predated her industrial injury. The Board notes that the Office authorized the May 3, 2006 surgery for right fusion of foot bones, right revision of calf tendon and right incision of heel bone. Accordingly, any disability resulting from the surgery authorized by the Office is compensable.<sup>9</sup>

When the Office secures an opinion from an impartial medical specialist and the opinion of the specialist requires clarification or elaboration, the Office has the responsibility to secure a supplemental report from the specialist for the purpose of correcting the defect in the original report.<sup>10</sup>

Because Dr. Williams' report was speculative and because it also appears to indicate that appellant has remaining residuals from her authorized surgery, the Office did not meet its burden of proof to terminate benefits in this case.

### **CONCLUSION**

The Board finds that the Office did not meet its burden of proof to terminate appellant's medical and compensation benefits effective February 21, 2008.

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<sup>8</sup> *Talmadge Miller*, 47 ECAB 673 (1996); *Harold Travis*, 30 ECAB 1071, 1078 (1979); *see also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.0810(11)(c)(1)-(2) (April 1993).

<sup>9</sup> *Rose M. Thompson*, 33 ECAB 1947 (1982); *see also* *Gaare R. Davis*, 48 ECAB 612, 614 (1997); *Kathryn Haggerty*, 45 ECAB 383 (1994).

<sup>10</sup> *Harold Travis*, 30 ECAB 1071 (1979).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated February 21, 2008 is reversed.

Issued: November 25, 2008  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board